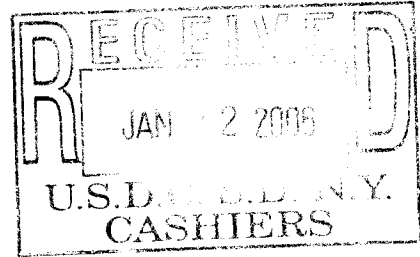


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Attorneys for Defendant  
ICI Americas, Inc.

06 CV 00270



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- x

PAUL SMITH,

Plaintiff,

Civ. \_\_\_\_\_

– against –

**NOTICE OF REMOVAL**

ICI AMERICAS,

Defendant.

----- x

TO THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF NEW YORK:

Defendant ICI Americas, Inc. (“ICI”) respectfully seeks to remove this action from the Civil Court of the City of New York, County of New York, Small Claims Part, to the United States District Court for the Southern District of New York. As reasons therefor, ICI states as follows:

**THE CIVIL COURT ACTION**

1. Plaintiff Paul E. Smith purported to institute an action against ICI in the Civil Court of the City of New York, County of New York, Small Claims Part (the “Civil Court Action”), entitled Paul Smith v. ICI Americas, SCNY 5592/05-1, by preparing a Statement of Claim (see Exhibit A) and attempting (unsuccessfully) to have a Notice of Claim and Summons to Appear served upon ICI’s New York subsidiary, Quest International (a separate and distinct

entity from ICI), located at 70 East 55<sup>th</sup> Street, New York, New York 10022. Significantly, plaintiff provided the Small Claims Court with an incorrect address for ICI's subsidiary (70 East 65<sup>th</sup> Street, New York, New York 10022), rather than the correct address (70 East 55<sup>th</sup> Street, New York New York 10022). Accordingly, ICI has never been served with any Small Claims Summons and Notice to Appear in this action.

2. According to the Statement of Claim, plaintiff's address is 132 East 45<sup>th</sup> Street, Apartment 8D, New York, New York 10017.

3. As set forth more fully below, plaintiff's Statement of Claim seeks recovery of the sum of \$4,950 plus interest to recover moneys arising out of non-payment of a medical insurance claim.

4. The Civil Court Action is removable from the Civil Court to this Court pursuant to 28 U.S.C. § 1441(a), because the complaint raises claims under the laws of the United States over which this Court has original jurisdiction under 28 U.S.C. §1331.

#### **BASIS FOR REMOVAL**

5. Plaintiff received health insurance from ICI by virtue of his employment with ICI. His wife, Sharon Smith, was also insured under ICI's health benefits plan, as a dependant of plaintiff.

6. ICI offered its employees, including plaintiff, the opportunity to participate in its self-funded health benefits plan. A self-funded benefits plan uses its own funds to pay for medical services rendered to its members.

7. The plan of health benefits provided by ICI to its employees, including plaintiff, constitutes an employee welfare benefit plan within the meaning of the Employee Retirement Income Security Act ("ERISA") 29 U.S.C. §§ 1001, et seq.

8. Plaintiff's Statement of Claim against ICI alleges that ICI failed to pay an insurance claim, and seeks reimbursement in the amount of \$4,950.

9. Because plaintiff's claim against ICI relates to an employee benefit plan within the meaning of ERISA, ICI may remove to this Court pursuant to 28 U.S.C. § 1441(a).

10. ERISA provides an exclusive federal enforcement scheme for claims by plan beneficiaries and preempts state tort and contract actions. 29 U.S.C. §§ 1132 and 1144.

11. This notice has been filed within the time provided by 28 U.S.C. § 1446(b) and the Federal Rules of Civil Procedure. Indeed, neither ICI nor its subsidiary, Quest International, has been served with a Notice of Claim and Summons to Appear, and therefore the time to remove has not commenced.. However, ICI received notice of this action on or about January 10, 2006 from its attorneys, who reviewed the Small Claims Court's files and learned of the actions that plaintiff attempted to commence against ICI.

12. Upon the filing of this notice, ICI will give written notice to plaintiff of the removal, and will file a copy of this notice with the Clerk of the Court, New York City Civil Court, County of New York, Small Claims Part.

WHEREFORE, ICI Americas, Inc. respectfully requests that the Civil Court Action now pending in the Civil Court of the City of New York, County of New York, Small Claims Part, be removed to this Court.

New York, New York  
January 11, 2006

EPSTEIN BECKER & GREEN, P.C.

By: 

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Jennifer M. Moak (JM-3173)

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New York, New York 10177-0077  
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Attorneys for Defendant  
ICI Americas, Inc.

RECYCLED

INSTRUCTIONS: Place only ONE letter or number in each space and leave a blank space between words

CIVIL COURT OF THE CITY OF NEW YORK  
SMALL CLAIMS PART  
STATEMENT OF CLAIM

I. CLAIMANT'S INFORMATION

(Your)

LAST NAME	SMITH										MIDDLE INITIAL	
FIRST NAME	PAUL											
ADDRESS (NO PO BOX)	132 E 45TH ST APT 8D											
CITY (Borough/Town/Village)	MANHATTON										STATE	NY
OTHER INFO											ZIP	10017

Doing Business As (In care Of)  
Attention To (Circle One)

PHONE NUMBER: ( )

II. DEFENDANT'S INFORMATION\*

(Their)

LAST NAME OR FULL NAME OF BUSINESS	ICI AMERICAS										MIDDLE INITIAL	
FIRST NAME	JO EL STREET											
ADDRESS (NO PO BOX)	NY										STATE	NY
CITY (Borough/Town/Village)											ZIP	10022

Doing Business As (In care Of)

Attention To (Circle One)

PHONE NUMBER: ( )

III. CLAIM

Amount Claimed: \$49,500.00 (Maximum \$5,000)

Date of Occurrence or Transaction: 6/3/99, 6/28/99, 8/2/01

Place of occurrence, IF Auto Accident:

- PRIMARY REASON FOR CLAIM (Check One):
- |                     |  |  |   |  |
|---------------------|--|--|---|--|
| Damage caused to:   | <input type="checkbox"/> automobile      | <input type="checkbox"/> other personal property | <input type="checkbox"/> real property                | <input type="checkbox"/> person          |
| Failure to provide: | <input type="checkbox"/> proper repairs  | <input type="checkbox"/> proper services         | <input type="checkbox"/> proper merchandise           | <input type="checkbox"/> goods paid for  |
| Failure to return:  | <input type="checkbox"/> security        | <input type="checkbox"/> property                | <input type="checkbox"/> deposit                      | <input type="checkbox"/> money loaned    |
| Failure to pay:     | <input type="checkbox"/> salary          | <input type="checkbox"/> for services rendered   | <input checked="" type="checkbox"/> insurance claim   |  |
| Breach of:          | <input type="checkbox"/> rent            | <input type="checkbox"/> commissions             | <input type="checkbox"/> for goods sold and delivered | <input type="checkbox"/> agreement       |
| Loss of:            | <input type="checkbox"/> contract        | <input type="checkbox"/> lease                   | <input type="checkbox"/> warranty                     | <input type="checkbox"/> use of property |
| Returned:           | <input type="checkbox"/> luggage         | <input type="checkbox"/> property                | <input type="checkbox"/> time from work               |  |
|                     | <input type="checkbox"/> check (bounced) | <input type="checkbox"/> check (stopped)         |   |  |

OTHER REASON: Be brief. Also, if needed, place IDENTIFYING NUMBER(S) here; Receipt #, Claim #, Account #, Policy #, Ticket #, License #, Plate # (s):

Today's Date

Signature of Claimant or Agent

\*DEFENDANT'S NAME: The legal name will be required in order to obtain an enforceable judgment. If the Defendant is a business, its full and correct business name should be obtained from the Office of the County Clerk in the county in which the business is located or check on the following website: [www.dos.state.ny.us](http://www.dos.state.ny.us) DEFENDANT'S ADDRESS: You must indicate the proper street address of the Defendant. A Post Office Box is not acceptable.

NOTE: If the Claim is a result of an automobile accident, the Claimant must be OWNER against OWNER.

(FOR OFFICE USE ONLY)

Today's Date: 12-14-2005  
Index No.:

5592 NSC 2005  
FEE: 20.00 Paid

SMITH vs. ICI AMERICAS  
Your Case is Scheduled for:  
Thursday,  
January 19, 2006

CERT'D #

COA CODE

CLAIM AMT

FEE

STANDARD FEE PLUS POSTAGE

☐ CLAIMANT V. DEFENDANT  
☐ DEFENDANT V. THIRD PARTY

NO FEE: POSTAGE ONLY

☐ CLAIMANT V. ADD'L DEFENDANT  
☐ WAGE CLAIM TO \$300

LANGUAGE

DATE DATA ENTERED

DATE NOTICES MAILED

CASE TYPE

MULTI DFT ☐ CTR/CLM ☐

3 PARTY ☐ CRS/CMPLT ☐

FIRST DATE

DAY COURT

☐ STATUTORY

☐ OTHER